"Bureau" Memorandum

Wisconsin Department of Public Instruction / Barbara Thompson, Ph.D., State Superintendent

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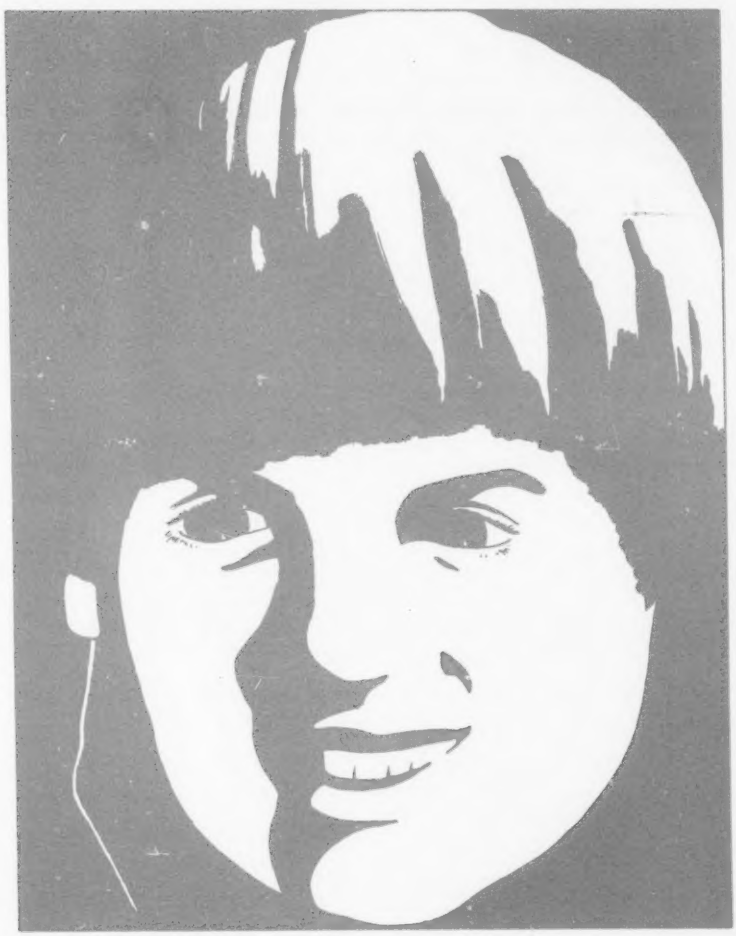

DIVISION FOR HANDICAPPED CHILDREN

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Guest Editor-James Despins is a program auditor in the program audit unit within the Division for Handicapped Children. This issue therefore deals with articles concerning special education due process models and procedures, program audits, records and record keeping practices, and sample forms developed by CESA 6 concerning referral, assessment, and individualized educational program (IEP) processes.

Guidelines for Authors

The *Bureau Memorandum* invites manuscripts directed to the common interests of special education personnel in schools. Especially welcome is stimulating writing dealing with (1) discussions of current professional and special education related materials; (2) descriptions of new techniques of innovative practices and programs; (3) research reports of interest and significance to readers. Dialogues, poems, and brief descriptions of new practices and programs will also be considered.

Manuscript Preparation

Manuscripts to be considered for publication in any issue of the *Bureau Memorandum* should:

- be submitted in duplicate (original and one clear copy)
- be typewritten (pica style), double spaced. All references, footnotes, and direct quotations should be checked carefully for accuracy.
- be accompanied by a complete identification of all authors. Include title and position, present location, and mailing address of each author.
- if appropriate, include black and white photos that have good light and dark contrast and that are at least 3" x 5."
- manuscripts should average about 1,500 words—approximately six double-spaced typewritten pages.

Manuscript Submission

- send manuscripts to Editors, *Bureau Memorandum,* Division for Handicapped Children, 126 Langdon Street, Madison, Wisconsin 53702.
- acknowledgement of receipt of a manuscript and notification concerning its disposition will be sent to the main author within 3 weeks of arrival. Additional time will elapse between acceptance of the article and its appearance in print.

The *Bureau Memorandum* is abstracted and indexed in the *Current Index to Journals in Education.*

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A Model for a Special Education Due Process Hearing

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The revision of Subchapter IV of Chapter 115 and the passage of the Education for All Handicapped Children Act of 1975 has emphasized the need for developing due process procedures as an integral part of the school program for handicapped children.[1] A major portion of this procedure is the provision for hearings where parents and guardians may challenge the decisions or actions of the school district in certain specified areas related to their child's program. The following material includes a model which may be followed in planning and carrying out a due process hearing. No claim is made that this model will adequately fit all circumstances or that it will meet all legal obligations. It is hoped that the material will provide a framework which will prove useful to parents, school personnel, hearing officers, and others who are interested and concerned with the hearing process and who wish to provide an appropriate vehicle for the discussion of critical issues in the education of handicapped children's programs.

The Hearing Process: An Outlined Description of a Suggested Model for Special Education Hearings

I. Introduction

A. The Purpose and Nature of the Hearing

The purpose of the hearing is to resolve disputes between representatives of the school and the parents (or surrogate parent) of a handicapped person. These disputes may be in four areas: identification, evaluation, placement, and free appropriate public education for the handicapped person. A hearing is an administrative procedure, however, it is quasijudicial in nature and is run like a court proceeding.

A hearing is, by nature, an adversary proceeding. This means that both the school and the parents have reached an impasse. The hearing is before a neutral hearing officer who must look at the record, listen to the testimony, examine the evidence, and then make a decision as to the appropriate public educational program and/or service for the handicapped person. Because a hearing is an adversary proceeding, both parties may present witnesses and evidence and may confront witnesses and rebutt evidence as presented by the other party. The hearing is not another educational planning conference. Planning conferences are typically informal meetings which lead to an amicable meeting of the minds between the school and the parents regarding important decisions in the child's education. A hearing is the result of a final disagreement between the parents and the school concerning identification, evaluation, placement, or the provision of free appropriate public education.

B. Legal Basis

A hearing is required by federal law under the Education for All Handicapped Persons Act, Public Law (PL) 94-142. In Wisconsin, hearings are also required by Chapter 115.81, Wis. Stats. These laws require that a hearing be held before an impartial hearing officer and that the basic due process rights of the individual in question are guaranteed.

Those due process rights include:

1. The right of proper notice.
2. The right to examine records.
3. The right to have a hearing before an impartial hearing officer.
4. The right to be accompanied and advised by counsel and by individuals with special knowledge and training with respect to the problems of handicapped children.
5. The right to present evidence.
6. The right to confront, cross-examine witnesses, challenge evidence presented, and the right to compel the attendance of witnesses.
7. The right to obtain a written or electronic verbatim record of the hearing.

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[1]The following article is adapted from: "A Model for A Special Education Due Process Hearing" published with permission from the Michigan Department of Education, August 1977. The project was funded through the Michigan Resource Center as part of the Great Lakes Area Regional Resource Center (GLARRC), Title VI-C.

8. The right to obtain written findings of facts and decisions of the hearing.

In addition, the due process rights include the right of appeal to the next higher authority, i.e., the state education agency (SEA) and eventually to the county court or circuit court.

C. Definition of Grounds for Hearing

The grounds for a hearing under PL 94-142 are the following:

1. Identification. The identification may have to do with the labeling of the child as either being handicapped or nonhandicapped, or with decisions regarding type of handicap. Identification also involves the protection of the child's records and other related privacy of information issues.
2. Evaluation. The area of evaluation concerns the type of evaluation and assessment instruments used to determine the performance of the child, whether or not these evaluation procedures were appropriate, whether the evaluation utilized the dominant language of the home, whether or not the parents agree with the evaluation, and whether or not the parents have been afforded an opportunity for an independent evaluation.
3. Placement. Typically, an educational planning committee will make a recommendation for placement for a handicapped child. This placement recommendation is subject to appeal to the hearing process. For example, if a child is placed in a program for the trainable mentally handicapped and the parents feel the child should be in a program for the educable mentally handicapped, they may request a hearing. The specifics of the placement; e.g., placement in a particular classroom or with a certain teacher are not appropriate items for a hearing inasmuch as they relate to the administrative implementation of the educational program as designated by the planning committee.
4. Free Appropriate Public Education (FAPE). The hearing may be requested because a child is being denied a free appropriate public education. For example, a public school district might deny placement for the child in a public school program and either suggest or not suggest that the parent place the child in a private school. The parent may request a hearing if the child is being denied a free appropriate public education. It is important to note here that in some states public support for nonpublic schools is illegal and it is the public school's responsibility to provide free and appropriate education programs for all students, including the handicapped. In other states, a child may be placed in a nonpublic school setting and the public school is required to pay for that educational program. Chapter 115.81 Wis. Stats., indicates similar grounds for a hearing:
   - Placement in a program.
   - Removal from a program.
   - Inappropriate program.
   - Nonplacement in a program.

D. Notice of Action

When the school district decides on a course of action relating to the above areas, a formal notice should be sent to the parents which includes the following items:

1. A detailed description of the proposed action or refusal to take action.
2. Reasons behind the decision described in (1) above.
3. Identification of the evaluation procedures, tests records or reports upon which the proposed action (or refusal) is based.
4. Inform parents of their right to challenge the school's decision at a hearing.
5. Describe the appropriate procedure for filing a complaint against the school's decision.
6. Parents should be advised of options to the recommended action which were considered prior to the final action.
7. A list of appropriate agencies should be made available to the parents. Agencies on this list should be capable of providing advice and assistance to the parent in understanding the proposed action and in preparing for a hearing.
8. The notice must advise the parents that a further appeal to the state is possible should they not be satisfied with the results of the local hearing.
9. The notice must be written in language understandable to the general public and provided in the native language of the parent unless it is clearly not feasible to do so. If the native language is not written, an oral interpreter may be provided as long as there is written evidence to this effect.

II. Complaint Process

A. Basis of a Complaint

A complaint serves as the grounds for a hearing under the provisions of PL 94-142 and Chapter 115.81, Wis. Stats. The complaint can be based upon any of the items identified in I-C above, i.e., identification, evaluation, placement or FAPE.

B. Complaint and Hearing Procedures

Under PL 94-142, every state, intermediate, and local education unit must establish procedures for the handling of complaints and procedures for hearings. Suggested hearing procedures can be found later in this document.

C. Filing of a Complaint

If parents do not agree with the proposed action of the school district, they should file a complaint in accordance with the procedures prescribed by the school district. The complaint should be in writing, it should state the specific nature of the dispute and quote relevant rules and regulations or sections of the law wherever possible. The complaint should be sent to the school district by registered

mail with a return receipt requested. Copies of the complaint should be sent to the state educational agency and (if applicable) to the intermediate school unit. The parent should keep a complete copy of all correspondence with the school district, especially the complaint.

D. Notice of Hearing

Upon receipt of the complaint, the school district must arrange for a hearing and notify all parties when a mutually agreeable place and date has been determined for the hearing. The hearing must be conducted within 60 days of an appeal as per Chapter 115.81, Wis. Stats. The parents must be notified of the date of the hearing 30 days prior to the date set.

III. Preparation for Hearing

A. Preparation by Parents

1. Planning. Once the parents have filed a complaint and have received notice of the hearing, they should:
   a. Contact an appropriate agency or an individual from whom they may request assistance,
   b. Meet with whomever is going to give assistance, and
   c. Develop a plan for presenting their case.

   This plan should state clearly who will make the presentation. One person must act as a spokesperson for each side so the parents must decide whether or not they will be represented by an attorney, by an advocate, or by themselves.
2. Evidence. Parents should decide what kind of evidence they will present.
   a. They should ask for access to their child's records in school and go through those records to see if there is anything in the records that they could use to support their case.
   b. They may decide to use items from the school records, the testimony of significant persons, or the results of private evaluations which support their case. If outside documents are utilized, copies should be made to submit for exhibit and in the case of technical material (such as a medical or psychological evaluation), the evaluator should be present to present and explain the material.
   c. The parents may request the attendance of specific school personnel at the hearing for questioning. Reasonable time must be given the school to arrange for the participation of requested staff.
   d. Expert witnesses may be utilized to testify regarding the evaluation of the handicapped person, the appropriate school placement, and/or in refutation of the school experts in either of these areas. Examples of such experts would include consulting psychologists, psychiatrists, school personnel from outside of the district, university personnel, and physicians with expertise in working with handicapping conditions.
3. The parents must decide upon witnesses and testimony to be presented.
   a. Witnesses may present testimony in support of the parent position and the parents have the right to question persons giving testimony for the school district.
   b. The parents should study the hearing procedure carefully in order to understand the various steps and to be thoroughly familiar with the procedure.
   c. The parents and their witnesses should carefully review their testimony so that they are sure of what they are going to say and how they are going to say it. It is important that the testimony be as concise but as complete as possible.
   d. The parents should anticipate questions which may be asked of them or their witnesses concerning their evidence and their testimony. They and their witnesses should be prepared to answer those questions.
   e. The parents and their witnesses should anticipate the arguments of the school district and prepare questions to ask school district personnel concerning the testimony and evidence to be presented by the schools.
   f. The parents have the right to decide whether to have an open public hearing or a closed hearing. This is an important decision. If a closed hearing is requested, then only those persons who have a direct bearing on the case may be present at the time of the hearing.
   g. Three days prior to the hearing, the parents should check with witnesses to be sure arrangements are clear.

B. School District Preparation

1. Once the school receives the notice of a complaint, the school district should make arrangements (including fee) with a competent person to serve as the hearing officer as per Chapter 115.81 (2) (d), Wis. Stats.
   a. The hearing officer must be impartial. Under the federal rules and regulations, the hearing officer may not be an employee of the education agency involved in the educational care of the child or any person having a personal or professional interest which would conflict with his or her objectivity in the case.
   b. The Wisconsin statutes provide for an independent hearing officer. The Department of Public Instruction is required to maintain a list of hearing officers who are not otherwise employed by or under contract to a school board but local educa-

tional agencies (LEA) may select a hearing officer who is not on that list.

c. A hearing officer needs to have two basic areas of knowledge.

(1) The person should know what a hearing is and the proper procedures for conducting a hearing. The person must know that he/she is expected to make a decision in the case and be able to render that decision in writing within the time limits set.

(2) The person should be familiar with the area of special education and handicapped persons. It is preferable that this person have considerable knowledge in the area of special education as it is very likely that much of the testimony presented will be technical in nature.

2. The school district should set a date and a place for the hearing after consultation with the hearing officer and the parents. The parents have a right to a hearing at a convenient place and at a convenient date and time so that they may participate.
3. The school district should arrange for record-keeping during the hearing.
   a. This could mean the arrangement for an electronic transcription, i.e., tape recorder or other recording device. If this option is selected, provision must be made for duplication of the tape after the hearing and probably for a verbatim transcript of the tape.
   b. A court reporter may be hired to make a stenographic transcription of the proceedings. Although this is a more expensive proposition, it clearly gives the best record of the proceedings.
4. The school district should develop a plan for presentation of their case.
   a. School district personnel should decide who will represent them as their spokesperson for the hearing, e.g., an attorney or school personnel.
   b. They should decide what evidence to present.
   c. They should decide which witnesses they will select including school personnel and/or other experts or persons who have knowledge of the particular case.
   d. They should notify school personnel whose attendance had been requested by the parents.
5. School district personnel should study the hearing procedures. All parties to the hearing should know the hearing procedures very well.
6. The school district should consult with its witnesses and review their testimony.
7. School district personnel should anticipate questions about their evidence and testimony and be prepared to answer those questions.
8. The school district representative should anticipate the arguments presented by the parents and develop cross-examination questions related to them.
9. The school district should contact all parties 3 days in advance of the hearing as a final check on all arrangements.

C. Preparation for the Hearing Officer

1. After being contacted, the hearing officer should acquaint himself/herself with the general nature of the dispute.
   a. A copy of the complaint leading to the hearing and a copy of the hearing notice should be requested.
   b. The hearing officer should be careful to avoid discussing the issue involved with anyone, especially persons on either side of the hearing.
   c. If the hearing officer, after examining the nature of the complaint and notice of hearing, feels that he/she has a conflict of interest, he/she should withdraw from the case.
2. The hearing officer should:
   a. review and become acquainted with the federal, state, and local rules, laws, statutes, and guidelines relative to the hearing procedures and
   b. become familiar with the plan of the intermediate educational unit (if any) and/or local education agency for the delivery of special education services.
3. The hearing officer should become acquainted with the complaint procedures at both the state and local level.
4. The hearing officer should check with the school district to see that the facilities for the hearing are appropriate, i.e., the room arrangement, necessary tables, chairs, arrangements for making a transcript of the proceedings, etc.
5. The hearing officer should send both parties a written outline stating the procedures to be used in conducting the hearing. This outline should be received by both parties at least 10 days prior to the hearing.

IV. The Hearing

A. Prehearing Activity

1. Upon arrival at the appointed place, the hearing officer should check to see if all necessary arrangements have been made for the hearing. When all participants are present, he/she should direct them to be seated, placing the school personnel on one side and the parent group on the opposite side of the conference table. The hearing officer should sit at one end of the table and the court reporter (or person making an electronic record of the hearing) should be placed wherever he/she determined to be the best location for carrying out his/her task. Variations on this arrangement may be made in keeping with the desires of

the hearing officer and with the physical necessities of the room being utilized for the hearing.

2. The hearing officer should set aside a few minutes before the actual start of the hearing for an orientation session. This period of time is not to be considered a part of the official hearing and should not be recorded. During this session a number of areas can be covered which may be of value in preparing for the operation of the actual hearing.
   a. First, the ground rules and procedures for the hearing should be reviewed. Both parties should have received a written statement from the hearing officer at least 10 days prior to the hearing in which a general procedural outline for the hearing was set forth. Clarification of these procedures should be made by the hearing officer, either by going through the outlined steps of the hearing or by answering questions which the written statement may have raised.
   b. Second, the hearing officer may wish to discuss the general background of the case with the parents and the school district including identification and clarification of the major areas of agreement as well as the areas of disagreement. This review should be very brief and *should in no way replace the formal presentations of the hearing proper.*
   c. Finally, the hearing officer should determine if there are any concerns on either side of the dispute with regard to the arrangements for the hearing. Such concerns (time, place, procedures, hearing officer, etc.) may be simply noted in the hearing report, may be adjusted prior to the hearing, or may be resolved through discussion. Only the most serious of concerns should result in a delay of the hearing.

When all questions have been answered and both parties are satisfied with the procedures, the formal hearing and recording thereof should begin.

B. Hearing
The hearing should begin with a formal statement by the hearing officer, substantially as follows:
Pursuant to the provisions of rule(s) ____(state rule)____ of the special education code of the state of _____ this hearing is being held on this date _____, 19___ before _____, hearing officer designated by _____, superintendent for the _____ school district. Representatives of the _____ school district have proposed the following action with regard to the education of _____. ____(state proposed action)_____ This proposed action is challenged by the parents of _____ being Mr. and Mrs. _____.

C. Identify Representative
The hearing officer should then request that those persons representing each party identify themselves for the record by stating their name, whom they represent, and their address. It should be noted that only one person is to speak on behalf of each party.

D. Open or Closed Hearing
It should then be determined (by questioning the parent representative) if the parent desires an open or a closed hearing. If a closed (private) hearing is desired, all persons (including witnesses) should be requested to leave the room except for:
   1. The representatives of both parties.
   2. The primary school official.
   3. The parents and the handicapped person (if present).

Other persons may be allowed to remain only with the consent of both parties. Known or potential witnesses should be instructed to remain nearby and be ready to be called to give their testimony.

E. School Opening Statement
The school district should then be asked to present their opening statement. This statement will be made by the representative (spokesperson) for the district and will consist of a short summary of the activities of the school district against which the parents have filed a complaint, the reason for the school's action, and the over-all approach the school district will take to prove the appropriateness of their action.

F. Parent Opening Statement
The representative for the parents will then be requested to make a short opening statement stating the position of the parents regarding the action of the school district, the reason for their position, and the general approach they will take to prove the appropriateness of their position. (The parents may choose not to make a statement at this time but rather to defer until just prior to the presentation of their case.)

G. Presentation of School's Case
The school district will then be called upon to provide evidence in support of their action (or proposed action):
   1. Exhibits, including tests, evaluation reports, and other documents may be placed in evidence and should be marked by the court reporter (or by the hearing officer in absence of a court reporter). For example:
      School (or Parent) exhibit 1: 7-15-78: (initials)
      Make sure that the party not introducing the exhibit has an opportunity to review it and ask questions of the witness being used to introduce it. Such questions should pertain only to the document itself and its admissibility. Objections may be offered to its admissibility, after which the hearing officer should state whether the document is received in evidence or rejected, and why.
      Evidence should be admitted only if it relates to the contested action of the school district. The results of any school evaluation regarding

the handicapped child must be made available to the parents prior to the hearing. Evaluations and other evidence of which the parents are not aware or to which they have not had access is not admissible as evidence unless the parents agree.

2. Witnesses may be called by the school district to give verbal testimony. The hearing officer may wish to have the witness sit in a designated place (witness chair) when giving testimony or, in a more informal setting, the testimony may be given while remaining seated at the conference table. Testimony should be given under oath. Witnesses may be sworn in by the court reporter or by the hearing officer (in the absence of a court reporter) as follows:
   a. Have witness raise his/her right hand.
   b. Ask, "Do you swear (or affirm) to tell the truth, the whole truth, and nothing but the truth?"

   Before giving testimony the witness should state his/her name and position for the record.

   The parent representative may cross-examine any witness called at the conclusion of their testimony and questioning from both representatives may continue to the point of reason. Any witness may be recalled at a later time by either party where reasonable grounds are present.

   Rules of evidence which prevail in civil courts should be followed as much as possible. If you, as the hearing officer, do not understand an objection, seek a clarification. Some objections pertaining to the procedures can be taken under advisement and disposed of at the time a decision on the matter is rendered. Others must be disposed of at the moment made. State your ruling and the reasons therefore. Basically follow a rule of fairness. A party may desire to place evidence in the record over a sustained objection for purposes on appeal. This is called "making a separate record" and should be allowed except in rare instances for extremely good cause. Such evidence should be clearly marked by the hearing officer.

   The hearing officer may ask questions of any witness in order to assist in proper understanding. It is best that this be accomplished at the conclusion of all questioning of a particular witness. If the parents represent themselves, minimal assistance can be given by the hearing officer. However, the hearing officer should not be placed in a position of presenting or arguing either the parents' or the school's case. An attempt should be made to limit all arguments and evidence to relevant points. If the hearing is especially long, it may be appropriate to recess for 10-15 minutes at some point. The conclusion of the school's case may prove to be an appropriate time.

H. Presentation of Parents' Case
   The parent representative will then be requested to present the parents' case, following the procedures and limitations as set forth in discussion of the school's case above. In addition to the presentation of the basic case, the parent representative will wish to present rebuttal evidence and testimony relating to the school district's presentation.

I. School Rebuttal
   The school district will then have an opportunity to present rebuttal evidence. Such evidence must be restricted to those points brought up by the parents in their presentation.

J. School Closing Statement
   The school district will next present a brief statement summarizing their proposed action and the evidence they have gathered in support of such action.

K. Parent Closing Statement
   The parents' representative will follow with a closing statement, summarizing the parents' position in opposition to the proposed school action and their evidence in support of their position.

L. Hearing Officer Closing Statement
   Finally, the hearing officer will terminate the hearing with a statement substantially as follows:
   The hearing regarding _____ (state point of disagreement) for _____, a student in _____ (school district), is now concluded. A written decision will be presented by the hearing officer to the _____ school district and the parents _____ on or before _____ (date).

V. Posthearing Activities

A. Hearing Officer

1. Before leaving the hearing site, the hearing officer should make sure he/she has the correct address of the superintendent of schools and of the parents in order to provide them with a copy of the hearing decision. The hearing officer should also be sure to have copies of all exhibits (if these are not to be attached to the transcripts) and should determine how soon to expect a copy of the hearing transcription.
2. In making the decision, the hearing officer should consider *only the evidence as presented at the hearing and reflected in the official transcript and the exhibits.* Any information obtained from other sources, either before or following the hearing, should not be used in arriving at a decision unless written consent of both parties has been obtained.
3. The written decision should contain as a minimum the following parts:
   a. A summary of the dispute leading to the hearing including enough detail for general understanding.
   b. The position of the school district including the major points of their presentation.
   c. The position of the parents including the major points of their presentation.

d. The findings of fact as determined by an examination of the evidence presented at the hearing with references to pages of the record and exhibits.
e. Major points of law as they relate to the case in question.
f. The decision of the hearing officer.
g. (Optional) General discussion of the hearing officer's rationale for the decision if not covered previously. The written decision should be responsive to the concerns of both parties.

4. The hearing officer's report and decision should be presented to both parties on or before the deadline established by the state or local school district.
5. All material regarding the hearing should be returned to the school district superintendent.

B. School Personnel
1. Arrangements for the transcription of the hearing procedures will have been made prior to the hearing. The district should, however, check to make sure of the arrangements concerning the number of copies desired, arrangements for delivery to parents, school, and hearing officer, the expected date of delivery, and payment for transcription services.
2. Upon receipt of the hearing officer decision, the appropriate school district officials should meet to discuss the decision and the implications for the district. Included in this deliberation must be a decision as to whether the district agrees and accepts the decision or whether an appeal will be filed with the state requesting a review of the decision.
3. If the district decides to contest the decision, an appropriate appeal should be filed in keeping with state rules and regulations and copies of the hearing transcript, the exhibits, and the hearing decision should be transmitted to the state. A contact should be made with the parents notifying them that appeal procedures have been initiated.
4. If information is received from the state that the parents have initiated appeal decisions, all documents must be forwarded to the state as described in item number 3 above.

C. Parents
1. The parents will receive a complete transcript of the proceedings including all exhibits. This copy of the proceedings should be provided at no costs to the parents.
2. Upon receipt of the decision from the hearing officer, the parents must determine whether to accept or appeal the ruling.
3. If the decision is made to appeal, the parents should contact the school district informing them of the decision and requesting information regarding the proper appeal procedures.
4. A formal application for appeal should then be filed following state and local procedural guidelines and preparation should begin for presentation of the case at the state level.

SUGGESTED PROCEDURES FOR AVOIDING AN IMPASS BETWEEN THE SCHOOL AND PARENTS OR ADVOCATES

A. School Personnel
1. Obtain agreement from appropriate person to serve as hearing officer.
2. Set a date, time, and place for the hearing that is mutually agreeable to all parties and in accordance with state rules and regulations.
3. Arrange for a verbatim transcription of the hearing.
4. Study and become familiar with the hearing process as developed in your and/or local district.
5. Decide who will serve as spokesperson (representative) for the school district.
6. Determine persons who will give testimony for the school presentation.
7. Anticipate parental questions and prepare appropriate responses.
8. Make staff members available for questioning upon parent request.
9. Prepare an opening statement.
10. Develop the school case in detail for presentation.
11. Contact all parties 3 days before the hearing as a final check on arrangements.
12. After the hearing, check arrangements with recorder regarding the number of transcripts, delivery to all parties, date of delivery, etc.
13. Upon receipt of decision, determine if the school district will appeal decision.
14. Upon decision to appeal, notify parents and file appropriate appeal with state.
15. If parent appeals, furnish state with necessary information and materials and prepare for state level hearing.

B. Parents
1. Contact an agency or a knowledgeable individual for assistance in assessing your disagreement with the school and helping you prepare for a hearing.

2. Meet with the agency representative or person selected.
3. Determine whether or not you have an appropriate basis for a hearing.
4. Notify the school of your request for a hearing. (File a complaint.)
5. Study and become familiar with the hearing procedure in your state and local district.
6. Develop a general plan for presenting your case.
7. Decide who will be your spokesperson (representative) at the hearing.
8. Request your child's school records including evaluation reports.
9. Decide what evidence you will present at the hearing.
10. Anticipate questions which you as a parent may be asked and decide upon your response.
11. Request the attendance of any specific school persons you wish to question.
12. Anticipate the school's case and prepare to cross-examine witnesses.
13. Select and contact any expert witnesses you wish to testify on your behalf.
14. Decide on an open or closed meeting.
15. Prepare an opening statement.
16. Check with your witnesses 3 days prior to the hearing to make sure all arrangements are clear.
17. When available, review the hearing transcript.
18. Upon receipt of the decision, determine if you wish to appeal.
19. If decision is to appeal, contact school district with regard to your decision and for correct appeal procedure.
20. File formal appeal application with the state with a copy to the local district.
21. Prepare for the state hearing.

C. Hearing Officers
1. Request a copy of the parents' complaint and the hearing notice.
2. Refrain from discussing the nature of the hearing with others.
3. You may wish to obtain information regarding the hearing procedure from persons familiar with the process.
4. Determine if you can remain unbiased in your role as hearing officer. (If not, disqualify yourself.)
5. Become familiar with state and federal rules and laws as they relate to the hearing process.
6. Be familiar with official state, intermediate, and local plans for the delivery of special education programs and services.
7. Determine if the school has made proper arrangements for the hearing.
8. Send both parties a written outline of the procedure you will follow in carrying out the hearing.
9. Upon arrival at the hearing site, check to see if arrangements are to your satisfaction.
10. Following the hearing, make sure you have correct address information for sending the hearing decision to both parties.
11. Find out from recorder how soon you will receive transcript.
12. Be sure that you have all exhibits or that they will be appended to transcript.
13. Prepare written decision and transmit to both parties in keeping with state and local time restrictions.
14. Return all hearing material to school superintendent's office.

SUGGESTED PROCEDURES FOR AVOIDING AN IMPASS BETWEEN THE SCHOOL AND PARENTS OR ADVOCATES

The inclusion of procedures which allow parents of handicapped children to participate in and to challenge the educational decisions of the school regarding their child's program is a giant step ahead. It is now difficult to believe that such important decisions were ever made arbitrarily and unilaterally by the school district.

A vital ingredient to the success of this new approach to educational program decision making must be the spirit and attitude with which the school district approaches this new relationship with parents. If the district is concerned only with following the letter of the law, a very legalistic system may be instituted which too often leads directly to the use of the special education hearing as a necessary recourse for parents. Hearings should be avoided whenever possible. They are expensive in terms of money and time. They are formal confrontations which seldom improve the relationship between the school and the parent.

The following material presents suggestions as to procedures which may be helpful to school districts in avoiding the final impasse situation with parents—the special education hearing. These suggestions should be especially considered by districts in preparing for and carrying out the multidisciplinary team and placement procedure.

These procedures are as follows:

1. Referral Procedures
   a. Contact and Explanation of Referral - When a child is referred for evaluation, it is necessary under PL 94-142 and Chapter 115.80 (3) (b), Wis. Stats., that the parent sign an evaluation consent form. It

is suggested that the person requesting the parent's signature explain the referral and evaluation process.

b. Contact and Interpretation of Diagnostic Information - After the evaluation procedures are completed, it is suggested that a person from the school district be assigned to contact the parent and interpret the results of the diagnostic and assessment data to the parent.

c. Sharing Information to be Used at the Multidisciplinary Team (M-team) Meeting - Prior to an M-team meeting it is suggested that *all of the information* which the professional staff will use at the M-team meeting be presented to the parents. If the parents have any questions concerning this information, an interpretation should be provided by the staff.

d. Staff Reports - Staff reports should be prepared prior to the M-team meeting. The staff should have all of its information in good form so that there is no question as to their interpretation.

e. Avoid Preevaluation Decisions - Staff should be cautioned that their attitude on educational recommendations should remain open prior to the M-team. Staff should be prepared to consider several alternative placements for a given child and be able to explain the pros and cons for each alternative to the parents.

2. M-team Procedures
There are at least two procedures that an M-team need consider to help alleviate the reaching of an impasse or going directly to the hearing procedures. Suggestions include, but are not necessarily limited to, the following:

a. Adjournment of the M-team if additional information is needed to make a decision. This adjournment should be for a definite period of time and a date set for reconvening the committee.

b. A trial placement period with specific date for review and reconvening of the M-team may be agreed upon. This trial placement should be set up with specific measurable expectations so that the trial placement could be evaluated by both the school and the parents.

3. Review Panel
A review panel might be established to review school procedures to determine whether or not they meet the requirements of the federal and state law including procedural safeguards. The purpose of this review panel is to serve as a check for the school district to make certain that it has followed proper procedures and has all of its 'ducks in a row' in case arbitration or hearing procedure follow. The composition of this review panel might include local coordinators from other school districts, intermediate district personnel, university personnel, or others.

4. Assignments of Parent Helpers
Parents or other persons may be designated and trained by the school district and parents to work with parents who are dissatisfied with M-team decisions. These persons should be perceived by the parents to be at least neutral. Such helpers must be knowledgeable about special education procedures and programs and parent perceptions of school personnel.

5. Informing Parties of Hearing Procedures
A procedure should be set up to insure that whenever a hearing is requested, some knowledgeable person will meet with both parties (together) to explain the hearing procedures. This would mean explaining how the hearing is to be conducted and describing the pros and cons of a hearing from both the school's and the parent's point of view. The purpose of this meeting would be to make certain that both parties understand the rigors of the hearing process and its quasijudicial and adversary nature. There might even be an attempt to dissuade the parties from going into the hearing process by encouraging further negotiations.

6. Use of Third Parties
Whenever an impasse in the educational planning process is reached, a major ingredient in the impasse is often a lack of trust. The use of third parties is suggested as a vehicle upon which trust may be built. Some functions for a third party include the following:

a. Information Provider - A third party may be used to provide information to the parent or to the school district concerning the law or the rules of any other factor relating to the impasse.

b. Facilitator - A third party may be used to facilitate further discussions between the school district and the parent.

c. Consultant - An expert may be requested to provide specific technical information to both the parent and the school district. This information may relate to a specific handicapping condition or to a specific procedural or legal point.

d. Negotiator - Mediator - A third party may be used as a negotiator or mediator between the two parties. The purpose of this third party would be to attempt to reach a settlement between the two parties through an informal negotiation process.

e. Fact Finder - A third party may be employed to study the situation, to gather information from both parties, and make a recommendation for the settlement of the dispute.

f. Decision Maker - A third party may be asked to make a decision regarding the dispute between the school district and the parents. A decision would be rendered only when both parties agree in advance to accept that decision.

The types of persons used to provide these various third party functions may range from parent helpers in the more informal areas to experts or negotiators from other school districts or from universities in the more formal procedures. The representatives from both parties should be utilized in the selection of a mutually acceptable third party. The selection process will vary with the formality of the procedure to be used. In the case of the most formal, i.e., decision maker role, it is absolutely essential that both parties agree to the third party selection.

Timelines for the settlement of the dispute must be carefully considered. Once a parent has finally requested a hearing, the school district must be able to respond within the time

limits set forth in the Wisconsin state statutes. If, however, the parents and the school district can agree on a specified delay in the formal hearing procedures to allow less formal efforts to be tried, this should be done. In order to assure the parents they have not given up their right to a hearing, a timetable for each of these procedures ought to be discussed with the parent so that both parties can be assured there will be no inordinate delays in the resolution of the issue.

DHC's Exceptional Education Program Audit- Basic Guidelines and Procedures

By Dick Trotta
Program Auditor
Division for Handicapped Children

James Despins
Program Auditor
Division for Handicapped Children

I. Purpose

To provide a vehicle for monitoring educational agencies' compliance with state and federal legislation as it pertains to the provision of appropriate educational programming to children identified as having exceptional educational needs (EEN).

Appropriate educational programming is construed to include the procedures for:

A. Identification.
B. Evaluation.
C. Placement.
D. Programming of EEN children.
E. Due process assurances that accompany the above activities as they are carried out.

II. Scope

State and federal legislation establish the state superintendent of public instruction as the single line of authority for the monitoring of the appropriateness of the educational opportunities being provided to handicapped children. This authority broadens the department's scope of responsibility beyond the local public school districts.

III. Procedure (Currently being reviewed by DHC)

A. Initiation of the program audit process.
   1. Complaints received from the public sector can initiate a program audit. Typical public sources from which such complaints could emanate are parents, organized groups, and/or other agency personnel.
   2. Reports from individual staff members of Department of Public Instruction (DPI) indicating the possible existence of discrepancies.
   3. Ongoing evaluation of reports and data submitted to the Division for Handicapped Children (DHC) which indicate the existence of possible discrepancies.
   4. Discrepancies which could constitute probable cause for an allegation of noncompliance that are noted through the site review process.

B. Internal data review.
   1. Once the alertment is received, the next step of the program audit process is to investigate the data on file internally within the DHC. These data are found in:
      a. Annual Plan of Services, Part A.
      b. Annual Plan of Services, Part B.
      c. Class enrollments.
      d. Program narratives.
      e. Correspondence on either individual cases or for the district at large.
      f. Any other source documents which would contain pertinent information regarding the educational programming for EEN children in that district.
   2. All information is reviewed and scrutinized for the existence of data indicative of a discrepancy in the appropriateness of the educational programming for EEN children within the district.

C. Determination of discrepancy.
   1. If a discrepancy is noted in the internal data review, a determination is made by a program auditor as to whether this discrepancy would affect the program in such a manner as to possibly deny an individual child in that district

due process and full opportunity to the identification, evaluation, placement, and programming for an exceptional educational need.

D. Program audit team site visitation.
   1. A team headed by a program auditor and a varying number of members determined by the size of the district visits the school district.
   2. The team, as an entity, conducts a conference with representatives of the administration (both regular and special education). This interview is designed to give the team insight into the administrative intent, policy, and procedures specifically in reference to due process and as related to the:
      a. Identification.
      b. Evaluation.
      c. Placement.
      d. Appropriate programming of children with EEN.

      Administrative representatives typically interviewed are:
      a. District administrator.
      b. Director of special education or program designee.
      c. Multidisciplinary team (M-team) coordinator and/or psychologist.
   3. Individual members of the team after the briefing interview then do investigatory actions in other areas such as:
      a. Central office district records.
         (1) Child records in central file.
         (2) Referral caseload records.
         (3) Multidisciplinary team caseload records.
         (4) Annual plans and program reports.
         (5) School board minutes.
         (6) All official EEN forms.
         (7) All policy and procedure manuals pertaining to EEN programs.
      b. Building records.
         (1) Child records in building office file.
         (2) Referral records.
         (3) Multidisciplinary team records.
         (4) Building program reports.
         (5) All official EEN forms used in building.
         (6) All policy and procedure manuals available in building pertaining to EEN forms.
      c. Classroom records.
         (1) Individual child folders.
         (2) Program reports.
         (3) Individualized educational program (IEP).
         (4) All official EEN forms used by the teacher.
         (5) All policy and procedure manuals available to the teacher.
   4. Individual members of the team also conduct interviews with the following:
      a. Additional school district staff.
         (1) EEN teachers, aides, therapists, and supportive personnel.
         (2) Regular education teachers.
         (3) Psychologists, social workers, and school nurse.
         (4) Supervisors.
         (5) Building principals.
         (6) Other administrative and clerical staff.
      b. Private school and/or agencies staff.
         (1) Principals.
         (2) Counselors.
      c. Parents.
         (1) Parents who have registered complaints.
         (2) Randomly selected parents of students in programs.
         (3) Representatives of parent organizations.
   5. Consolidation of information:
      a. All pertinent information gathered is discussed and a total perspective is obtained regarding the identification, evaluation, placement, and programming of children with EEN.
      b. All information, data, and impressions are submitted in written form to the program auditor by team members.
   6. The program auditor prepares a written report to be submitted to the administrator of the Division for Handicapped Children. All findings are documented. Recommendations are made as to whether there appear to be discrepancies of sufficient magnitude to justify an allegation of noncompliance.
   7. The division administrator:
      a. Decides the discrepancies are not of sufficient magnitude to constitute an allegation of noncompliance and:
         (1) Directs a letter to the district detailing the changes that are to be made to remediate the minor discrepancies within a specified time.
         (2) Refers a copy of the report to the DHC administrator or supervisor germane to the problem for assistance to the district and follow-up.
      b. Decides the discrepancies are of sufficient magnitude to constitute an allegation of noncompliance and:
         (1) Directs a letter to the district detailing changes and items to be implemented within 30 days or less. Letter states there may be probable cause for noncompliance action.
         (2) Upon receipt of verification from the district that discrepancies have been rectified, the division administrator informs the district that there no longer is a suspicion of probable cause for an allegation of noncompliance. This letter is not intended to apply to the complete program but only for those items originally detected as possible discrepancies by the program auditor.

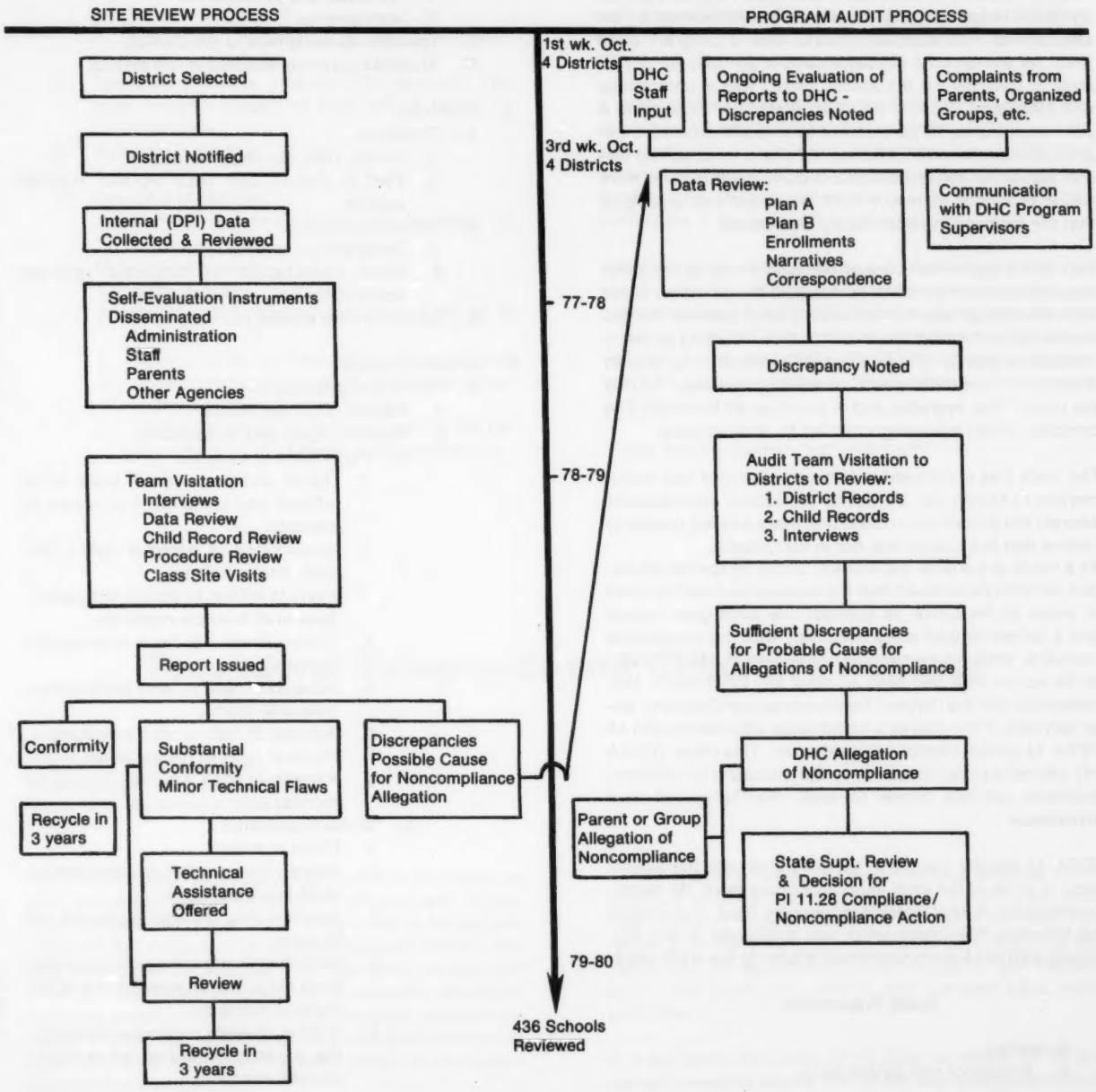
(3) In the event that the district in question does not satisfactorily rectify the discrepancies in the prescribed time, the division administrator proceeds with the allegation of noncompliance.

(4) It is also possible for an individual, a group of individuals, or an organization to make an allegation of noncompliance to the division administrator. In such a case, the procedure is begun at this point.

c. The division administrator upon review of the information gathered by the program auditor, communications, and subsequent actions of the district makes an allegation of noncompliance against the school district in question and so informs the state superintendent.

8. The state superintendent then proceeds with noncompliance action as per PI 11.28, Noncomplying Districts, Wis. Adm. Code of the Rules Implementing Subchapter IV of Chapter 115, Wis. Stats.

a. It is also possible for an individual, a group of individuals, or an organization to make an allegation of noncompliance directly to the state superintendent. In such a case, the procedure is begun at this point.



Preaudit Service Offered in CESA 14

By Thomas Long
Director of Special Education
CESA 14

In early February of this year, one of the 31 districts served by CESA 14 special education services was informed by the Division for Handicapped Children that a program audit team for exceptional education would be carrying out an audit to determine if the school district was in compliance with Chapter 115.85 (1) (2), Wis. Stats. Not having had a prior opportunity to be involved in an audit created a degree of apprehension in the minds of the local school district personnel and in the minds of those to be involved from CESA 14 special education staff. It was not with great glee that the forthcoming opportunity was viewed.

Part of the apprehension was because it was to be a first experience and it is difficult to deal with the unknown. More than that though was the uncertainty as to whether the district would be found to be in compliance. Working as an intermediate agency with all variables involved in serving 31 districts in the area of special education precludes "betting the ranch" that everyday and in everyway all the many and complex details are being attended to appropriately.

The audit was conducted in February. Survival was documented in March per a letter to the school administrator wherein the school was notified that there was not reason to believe that the district was not in compliance.
As a result of the audit experience, CESA 14 special education services determined that the experience could be used to assist all the CESA 14 schools. The audit gave reason and a format to deal more effectively with the compliance concerns. With the permission of the district administrator of the school that had been audited, Mr. Contrucci's (administrator for the Division for Handicapped Children) letter advising of the district's compliance was shared with all CESA 14 school district administrators. This office (CESA 14) offered a preaudit service to the remaining 30 districts. Nineteen schools chose to avail themselves of that experience.

CESA 14 special education services staff with the assistance of some of the local multidisciplinary team (M-team) coordinators in local districts developed, tried, and revised the following instrument which was presented to and discussed with all M-team coordinators prior to the audit visits.

Audit Preparation

I. Screening.
   A. Preschool and school entry.
      1. Methods and procedures.
      2. Instruments.
   B. Transfer students new to the district.
   C. Students currently enrolled in the district.

II. Referrals.
   A. Timelines.
      1. Ninety (90) day requirement.
      2. Part A, Public Law (PL) 94-142, Panitch update.
   B. Referral process.
      1. Description - referral form.
      2. Staff knowledge of process (parent notification).
   C. Referrals from private sector.

III. M-team process.
   A. Forms and procedures.
      1. Review of current forms.
      2. Parental rights and due process.
         a. Permission to evaluate.
            1. Types and purposes of tests to be utilized and explanation of review of records.
            2. Explanation of parental rights, verbally and in writing.
            3. Parents invited to attend and participate in all M-team meetings.
            4. Convenience of M-team meetings for parents.
            5. Advised of right to have someone attend with them.
            6. Advised of right to refuse evaluation.
            7. Parents' right to review all records.
            8. Parents notified who has access to records.
         b. M-team evaluation.
            1. Dates in order.
            2. Written documentation submitted by all M-team members.
            3. Appropriately certified personnel on M-team.
            4. Multidisciplinary team recommendations reflect recommendations of individual members.
            5. Written M-team recommendation to the parents reflecting all M-team recommendations.

IV. Placement.
- A. Placement form.
  1. Placement reflects M-team recommendation.
  2. Due process.
- B. Timeline (30 days).
- C. Individualized Educational Programs (IEP) in place, dated, and signed within 6 weeks of placement.
- D. Termination process.

V. Reevaluations.
- A. Timelines.

VI. Review of folders.
- A. Current exceptional educational needs (EEN) students.
  1. Reflects enrollment.
  2. Services delivered reflects M-team recommendations.
- B. Terminated and/or inactive EEN students. (M-team recommendations that reflect follow-up considerations.)
- C. Referrals in process.
  1. Timelines.
- D. Non EEN M-teamed.
  1. M-team recommendation and provision for follow-up.
- E. M-team evaluation.
  1. Date in order.
  2. Written documentation submitted by all M-team members.
  3. Appropriately certified personnel on M-team.
  4. M-team recommendations reflect recommendations of individual members.
  5. Written M-team recommendation to the parent reflecting all M-team recommendations.
- F. Placement.
  1. Placement form.
     a. Placement reflects M-team recommendation.
     b. Due process.
  2. Timelines (30 days).
  3. IEP's in place, dated, and signed within 6 weeks of placement.
  4. Termination process.

VII. Additional comments and/or recommendations.

The foregoing instrument was used to structure preaudit visits as well as report back to local school administration, M-team coordinators, and other involved personnel the results and recommendations of the preaudit. The preaudit in each local district involved at a minimum the local M-team coordinator, however, administrators, principals, and others did attend and did participate.

A really sincere and largely successful effort was made to establish and maintain a spirit of cooperation. This was not intended to be a threatening experience. To alleviate that concern and at the suggestion from one of the school administrators, M-team coordinators were invited and did participate in the preaudit of other districts.

The initial audit was a positive experience. It provided this agency and the schools served with needed criteria and generated needed and timely inservice effort which resulted in better informed and prepared personnel at all levels. It has been and is compatible with CESA 14 special education service's goal of assisting districts prepare for anticipated program reviews.

It was time consuming, but what isn't?

Procedural Safeguards and Children's Records

By Linda Pauly
Educational Services Assistant
Federal Support Programs Section
Division for Handicapped Children

The importance of procedural safeguards in providing an appropriate educational program for children with exceptional educational needs (EEN) is stressed in Public Law (PL) 94-142, Education for All Handicapped Children Act and Subchapter IV, Chapter 115. The strict policies and timelines established in both laws on parental permission and involvement, confidentiality of information, nondiscriminatory testing, hearings and appeals, and placement in the least restrictive environment clearly attest to the importance of these procedures.

As one means of monitoring the procedural safeguards established within an educational agency, the program audit team routinely reviews individual children's records. This review provides specific documentation for the team in determining if the established procedures are in fact followed and if the rights of children and parents have been protected.

It is not within the scope of the audit to review the child's entire cumulative record. Rather the team examines the ele-

ments relating specifically to the identification, evaluation, and placement processes involving individual children as well as the procedures utilized to protect the confidentiality of the information.

Specific elements which address these processes are the referral form, written parental consent for evaluation, the multidisciplinary team (M-team) report, the placement decision, written parental consent for placement, and the individualized educational program (IEP). A good policy which every educational agency should adopt and follow is that of maintaining one file in one location which contains these elements. The files may be kept in the central office, in the principal's office, or with the individual teachers. Wherever the location, it should be consistent throughout the agency, and each file should contain *all* the information listed above.

Further, federal law requires that a sign-up sheet be available either within each child's folder or on the front of the file cabinet so that individuals who review the record may sign their name, the date, and indicate the reason they have reviewed the record. Authorized school employees and parents are exempt from signing this form each time they review the record.

When reviewing a child's record, the team looks for the following information:

1. Referral form.
   a. Does it indicate who made the referral?
   b. Is it dated?
   c. Does it differentiate between exceptional educational needs (EEN) and nonEEN?
   d. Does it contain information from the referral source on the child's behavior related to educational performance, the child's academic functioning, and any previous interventions which were utilized?
   e. Does it indicate the date and manner in which parents were notified that a referral was made?

2. Written parental consent for evaluation.
   a. Does it provide the parent with the option to consent or deny permission for evaluation?
   b. Does it indicate what instruments will be used, what areas will be assessed, and who will conduct testing?
   c. Does it inform parents of their rights to review their child's records, participate in the evaluation process, have cultural or minority representation on the M-team, obtain an independent evaluation, and request a hearing if they disagree with the placement or lack of placement?
   d. Does it allow the parents to indicate that they understand what they are signing?
   e. Is it signed and dated?

3. Multidisciplinary team report.
   a. Has any M-team action been conducted prior to the date on which parents gave their written permission for the evaluation?
   b. Was the M-team composed of at least two employees of the school district, and was at least one of the members certified in the area of the suspected disability?
   c. Does the report contain all findings, reports, recommendations, and the M-team plan?
   d. Does it document that the child has a handicapping condition, a disability, and need for special education?

4. Placement decision.
   a. Is it made by the director of special education or program designee?
   b. Does it include the type, level, and location of placement; the personnel involved; the beginning date, and anticipated duration of placement; and responsibilities for special education, regular education, and related and supportive services?
   c. Are the parents informed in writing?
   d. Did the parents receive a copy?

5. Written parental consent for placement.
   a. Does it provide the parent with the option to consent or deny permission for placement?
   b. Is it signed and dated by the parent?
   c. Does it indicate to the parent that they can request a hearing if they disagree with the decision?
   d. Have no more than 90 calendar days lapsed between the date of referral and the date the parents provide permission for placement?
   e. If more than 90 calendar days have lapsed, was written parental permission received?

6. Individualized educational program (IEP).
   a. Does it contain statements of the present levels of educational performance and annual long and short term objectives and include performance criteria; method of measurement; anticipated timeline for meeting criteria; specific educational, supportive, and related services; personnel involved; percentage of time involved in regular and special education; and anticipated interventions, methods, and materials to be employed?
   b. Have the parents signed and dated it?
   c. Was it completed within 6 weeks of placement?

7. Reevaluation.
   a. Was it conducted within 3 years of initial placement?
   b. Are all of the elements described above, except parental permission for reevaluation, contained in the child's record?

Close adherence to these procedures is of benefit to both the educational agency operating the program and to the child and parent. By following these procedures in detail, the educational agency can document and prove that they have afforded parents and children their full rights under the laws. In the same vein, parents and children can be assured that their rights have been protected and observed.

Sample Forms Developed by CESA 6

By Marilyn Veneziano
Child Find Coordinator
CESA 6

With the advent of state and federal legislation guaranteeing handicapped children an appropriate education, a tidalwave of new mandatory procedures has arisen. To make sense and reason out of confusion, professional staff members of the Exeptional Education Department of Cooperative Educational Service Agency (CESA) 6 formed a committee of exceptional education teachers to chart a course through the multidisciplinary team (M-team) process and onto compliance with the law.

The committee members represented both their school district and their professional area. They were chosen from throughout the CESA 6 area in order to achieve a cross section of various local operations. The following areas of education supplied input: administration, psychology, early childhood, physical therapy, mental retardation (trainable and educable), speech/language, guidance and counseling, multiply handicapped, learning disabilities, regular education classroom, and regular education reading.

The general committee was divided into three subcommittees, each charged with the research and development of a specific area. The areas included the referral, assessment, and individualized educational program (IEP) processes. After a careful review of the legislation and literature, each subcommittee produced recommended forms and the accompanying procedures for their respective area. Evening meetings were held at a central district. At that time each subcommittee compiled their "homework" as a group. Their findings were then presented to the total group for broader input, classification, and justification.

The skill, dedication, and teamwork of this committee made the manual possible. It has been adopted by all schools in the CESA 6 area. An inservice program was developed to present the IEP manual and process to all exceptional education teachers throughout the CESA 6 area. Each local district exceptional education team carried the information back to their local school for implementation. The original committee was available for consultation and the CESA 6 exceptional education staff members continue to provide individual district inservice upon request.

HEARINGS AND APPEALS

If, after meeting with the multidisciplinary team or receiving the director of special education's placement decision, you are not in agreement with your child's individual education plan,

YOU MAY . . .

. . . file a letter of appeal with your local school district administrator. This will begin the appeal process. You have the following rights and timelines to work within. (Chapter 115.81, Wis. Stats.-Parental Appeals.)

(4) Rights at hearing. A parent shall have access to any reports, records, clinical evaluations, or other materials upon which a decision relating to the child's educational program was wholly or partially based or which could reasonably have a bearing on the correctness of the decision. At any hearing held under this section, the parent may determine whether the hearing shall be public or private, examine and cross-examine witnesses, introduce evidence, appear in person, and be represented by an advocate. The school board shall keep a full record of the hearing. A detailed summary thereof shall be given to the parent, if requested.

(5) Independent examination. If a child's parent believes the diagnosis or evaluation of the child as shown in the records made available to him under sub (4) is in error, he may obtain an independent examination and evaluation of the child and have the report thereof presented as evidence in the hearing. If the parent is financially unable to afford an independent examination or evaluation, the school district shall reimburse the parent for the reasonable expenses of the examination or evaluation.

(6) Hearing and Decision. The school board shall hold a hearing within 60 days of appeal and shall issue a decision based upon the hearing record and the recommendation of the multidisciplinary team within 30 days of the close of the hearing. If no decision is made by the school board within the 30-day period following the close of the hearing, the decision appealed from shall be deemed affirmed.

(7) Appeal to state superintendent. Within 30 days after the decision of the school board, the parent may appeal the decision to the state superintendent. The state superintendent shall issue a decision based upon the hearing record and the recommendation of the multidisciplinary team within 30 days of appeal. If no decision is made by the superintendent within the 30-day period following the close of the hearing, the decision appealed from shall be deemed affirmed.

(8) Appeal to court. Within 30 days after the decision of the state superintendent, the parent may appeal the decision to the circuit or county court of the county in which the child resides.

History: 1973 c. 89.

A more detailed description of the procedure is contained in the rules implementing Subchapter IV of Chapter 115, Wis. Stats. (PI 11.06 Hearings and Appeals).

If you have any questions, feel free to contact your school district administrator.

_____ School District

SCHOOL DISTRICT ASSESSMENT REFERRAL

Name of Child: _____ Birthdate: _____

Parent: _____ Grade: _____

Address: _____ Telephone: _____

Referring Agent: _____ Date of Referral: _____

Relationship to Child: _____

TYPE OF REFERRAL: (check one)

☐ suspected EEN

☐ non-EEN

(Note: This form should also include information relative to the existence of bilingual background or the existence of deafness in the parents or guardians. It should also contain the name of a contact person in the school to whom the parents or guardians could go for clarification or explanation.)

REASON FOR REFERRAL: _____

_____

_____

CURRENT ACADEMIC PERFORMANCE: _____

_____

_____

CURRENT BEHAVIORAL PERFORMANCE: _____

_____

_____

PREVIOUS INTERVENTIONS ATTEMPTED TO ASSIST THE CHILD (educational, medical, social, etc.)

_____

_____

Parents informed by: _____ How informed: _____

Date: _____

OFFICE USE

Forms discussed and delivered to parent:

approval for assessment _____
medical record (if necessary) _____
release of information _____

Date Sent: _____ Date Received: _____

Signature of Principal: _____

Copy to School Office

_____ School District

NOTICE OF INTENT TO CONDUCT AN EVALUATION

Date _____

Dear Parent:

_____, _____
(name) (title)

recently filed a form requesting that your child, _____
(child's name)

be evaluated by the school for suspicion of exceptional educational need and related service. In a prior communication (conference, phone, or mail), you have been informed of the school's concern for your child's educational progress and the need to gather further information so that the best possible program can be planned.

The state's administrative regulations and federal law require that you approve of any testing or other evaluation of your child before it has begun. Please indicate your choice on the enclosed form and sign it. Your cooperation is appreciated.

The evaluation procedures and their associated instruments that will be used in each of the following areas are:

ASSESSMENT AREAS	ASSOCIATED INSTRUMENTS	EVALUATION PROCEDURES
Intelligence: Achievement: Behavior: Physical: Other: Copy to Parent		(Note: This form should also state who is going to administer the instruments and for what purpose they are being given.)

The findings of the evaluation will be used by the following people to develop a set of program recommendations for your child.

_____, _____
(name) (title)

_____, _____
(name) (title)

_____, _____
(name) (title)

It is very important that you be aware of and understand that you have the following rights.

1. To review all records related to the referral for evaluation.
2. To review the procedures and instruments to be used in the evaluation.
3. To refuse to permit the evaluation.
4. To be fully informed of the results of the evaluation.
5. To get an outside evaluation for your child from a public agency, at public expense if necessary. (Financially eligible.) (PL 94-142-Parents have right to a private evaluation at no expense to them.)
6. To have an interpreter/translator if your primary language is not English or if you are deaf.
7. To discuss the reason and the nature of the school's request to evaluate with a helpful individual before signing the "Parental Permission to Evaluate" form.
8. To have cultural or minority representation or an advocate speak for you at the multidisciplinary team meeting.
9. To attend all multidisciplinary team meetings.
10. To refuse to permit the placement.
11. To have a hearing held concerning the multidisciplinary team's decision and the child's placement.

Your child's educational status will not be changed without your knowledge and written approval.

Enclosed is a Parent Permission Form which must be completed by you and returned to this office within 5 school days.

Should you have any questions please do not hesitate to call me at _____.

Enclosures:
Copy to School Office

_____ School District

PARENTAL PERMISSION TO EVALUATE

Name of Administrator and/or M-team Coordinator:

_____

School: _____

Address: _____

Phone Number: _____

Dear Administrator and/or M-team Coordinator:
I am in receipt of the "Notice of Intent to Conduct an Evaluation" for my child, _____.
(child's name)

I have read and understand the procedures to be used and the rights of parents and my child as explained.

I understand that records and information involved with the assessment will be shared by the local district, the cooperative educational service agency, and the State Department of Public Instruction. No records or information shall be released or shared with other agencies or persons without prior written parental (or guardian) approval.

I understand that this approval is given for assessment only, not placement.
I understand that I will be involved and consulted throughout the entire multidisciplinary team process of assessment and instructional recommendations.

I understand the reasons and the description of the evaluation process that you provided and have checked the appropriate box below.

☐ Permission is given to conduct the evaluation described.

☐ Permission is denied.

_____
Parent's Signature

_____
Date

Copy to Parent

_____ District

PERMISSION TO OBTAIN AND RELEASE INFORMATION

This form is to be used to obtain information needed for assessment purposes and/or to release information to physicians and/or others.

I, the undersigned, hereby request and authorize _____

_____ (agency(s) or person)

to release to _____ (agency(s) or person)

any medical, psychological, school, and social information concerning

_____

(name of child)

_____

Signature of parent, guardian, and/or child as appropriate

_____

Relationship to child

_____

Address

_____

_____

Date

Copy to Parent

_____ School District

PARENT NOTIFICATION OF MULTIDISCIPLINARY TEAM MEETING

Date _____

Dear Parent:

This letter is to inform you that we have completed the evaluation of your child, _____,

grade _____ for which you gave us permission recently.
We have scheduled a multidisciplinary team meeting for:

_____	_____	_____
(date)	(time)	(place)

to discuss the evaluation results.
If for some reason this schedule is not acceptable to you, please contact me as soon as possible. You are encouraged to attend and participate in this discussion. Your involvement is vital.
If you have any questions please feel free to call me at any time.

Yours truly,

_____
Multidisciplinary Team Coordinator

Phone Number _____

OFFICE USE

Parent Contact: ☐ phone ☐ conference

_____	_____
(date)	(date)

By: _____
(name and title)

Answer to M-team invitation (include accommodations made by school):

_____

Copy to Parent

_____ School District

M-TEAM STAFFING REPORT/PLAN

Note: This form is to be used to record M-team staffing minutes. Supporting documents by each team member should be attached.

Case Facilitator _____

Name of Child:	Birthdate:	Age:	Sex:
Parent:	Address:		Phone Number:
School District of Residence:	School Attended:		
Teacher:	Grade:	Date of M-Team Meeting/Plan:	

Members of M-Team Present (signatures and titles):

_____ _____

_____ _____

_____ _____

Consultants (signatures and titles): Parents (signatures):

_____ _____

Purpose:
- Initial Staffing Report _____
- Restaffing of EEN Pupil _____
- Other _____

Summary of Individual Written Reports/Present Level of Performance:

1. DISABILITY DETERMINATION: Based on all the analyzed data, does this pupil/child, in the best judgement of this M-team, have a disability(ies)?

_____ Yes _____ No

If yes, in which of the following areas?

_____ Mental _____ Emotional

_____ Physical _____ Learning

Copy to Special Education Teacher

M-TEAM STAFFING REPORT/PLAN (continued) _____

Name of Child

II. HANDICAPPING CONDITION(S): If the child has a disability, the M-team shall determine if the child has a handicapping condition, pursuant to Chapter 115.76 (3) (a) through (i), Wis. Stats., and PI 11.34 (2):

_____ (a) Physical, crippling, or orthopedic disability.
_____ (b) Mental retardation or other developmental disabilities.
_____ (c) Hearing impairment.
_____ (d) Visual disability.
_____ (e) Speech or language disability.
_____ (f) Emotional disturbance.
_____ (g) Learning disability.
_____ (h) Pregnancy

A. What effect does this child's disability have on his behavioral functioning in the present educational program?

B. To what degree does this child's disabilities interfere with his/her academic performance in the present educational program?

C. Availability of needed curriculum adaptions - can all or some of pupil's needs be met in the regular education program with or without modifications?

_____ Yes _____ No List curricula areas and modifications:

III. EXCEPTIONAL EDUCATIONAL NEEDS DETERMINATION BY M-TEAM: In the best judgement of this M-team after analysis of evaluation data:

Check One Item

_____ A. This pupil/child does not have exceptional educational needs (non-EEN) as defined by Chapter 115 and DPI rules.

_____ B. This pupil/child has a disability which is a handicapping condition and exceptional educational need (EEN) requiring special education services.

PRIORITIZED EDUCATIONAL NEED(S): _____

1. _____

_____

2. _____

_____

3. _____

_____

4. _____

_____

Copy to Special Education Teacher

M-TEAM STAFFING REPORT/PLAN (continued) _____

Name of Child

PRIORITIZED EDUCATIONAL NEED(S): (List by number)

NEED NUMBER ( )

Goal:

Objective(s):

NEED NUMBER ( )

Goal:

Objective(s):

M-team Recommendation for Specific Procedures, Techniques, Materials, Learning Styles, etc.:

PARENTS INVOLVED: _____ Yes _____ No

_____ attendance refused.
(date of)

Plan sent _____

Scheduled Consultation Dates for follow-up between special education, regular education, and supportive staff:

_____

_____

_____

Copy to Special Education Teacher

M-TEAM STAFFING REPORT/PLAN (continued) _____
(name of child)

NEED(S):

Goal:

Objective(s):

NEED(S):

Goal:

Objective(s):

NEED(S):

Goal:

Objective(s):

NEED(S):

Goal:

Objective(s):

Copy to Parent

_____ School District

PROGRAM RECOMMENDATIONS

Student _____ Enrollment Date _____

Address _____ Program Type _____

_____ Program Duration _____

Date of Birth _____ Regular Education Involvement: ☐ YES ☐ NO

School District/Residence _____ Program Location _____

Program Level _____ Case Facilitator _____

PERSONNEL INVOLVED	RESPONSIBILITIES (include percent of time):
Regular Education Staff–	
Special Education Staff–	
Supportive Staff–	

JUSTIFICATION FOR PLACEMENT:

MONITORING SCHEDULE and EVALUATION:	RELATED SERVICES: (i.e. Physical education)
	PERSON RESPONSIBLE FOR RELATED SERVICES:

OFFICE USE

PLACEMENT DECISION

Approved _____ Disapproved _____

_____ _____

Director of Exceptional Education — Date of Approval/Disapproval

_____ _____

School District Administrator — Date of Approval/Disapproval

APPROVE THE ABOVE PLACEMENT _____ _____

Parent Signature — Date

REJECT THE ABOVE PLACEMENT _____ _____

Parent Signature — Date

Copy to Parent

Record Keeping and Confidentiality to Insure Due Process

By James Deepins
Program Auditor
Division for Handicapped Children

Dick Trotta
Program Auditor
Division for Handicapped Children

It has been the experience of the Division for Handicapped Children's (DHC) program audit team that a large number of problems encountered in school districts center around record keeping. School personnel have not fully grasped the concept of documentation as required by law and the concept of due process. It has been evident that in the vast majority of cases, the staff had basically followed the proper procedures but had not taken the time to document the fact. As they often say to us, "Our intentions were good." However, as Samuel Johnson said in 1775, "Sir, hell is paved with good intentions."

In these days of due process hearings, compliance, legal mandates, etc., it is necessary to be able to document that appropriate processes and procedures have been utilized in referring, evaluating, placing, and programming for children with exceptional education needs (EEN). The necessity for this stems not from the passage of educational laws or departmental policies but from the basic civil rights that an individual in this country enjoys as a citizen under the constitution.

The act of referring, evaluating, placing, and programming of a child into exceptional education is totally designed to identify a child as being different in some way from the normal child. The identification as an EEN child will essentially cause the child to be treated differently than the "normal child." This treatment may or may not stigmatize him/her and may or may not abridge the full exercise of his/her civil rights. No one can so jeopardize an individual without according that individual due process.

In addition to the requirments of the law and due process, there is a third concept that must be included - that of informed consent. Individuals or parents acting in their behalf have the right to be fully informed of their rights, alternatives, procedures to be used, and possible deleterious effects *before* they give consent for a process to take place. Protection of the system and the personnel thereof requires that adequate means are used to insure that full information is made available when consent is requested.

RECORD KEEPING SYSTEM—The development of an efficient record keeping system can be a simple process if approached with a positive attitude and acceptance of the fact that it must be done. A record keeping system can be developed by following these steps.

1. Study and understand the legal requirements and due process. Find out what has to be done, how, when, and by whom.
2. Develop documentary forms that will be specific to these requirements.
3. Clearly articulate the personnel responsible for collecting the forms and at what time.
4. Develop a central collection and storage location.
5. Develop a system to insure that the procedure is followed appropriately and in a timely fashion.

RECORDS—A record for an individual child who has been referred, evaluated, identified, placed, and programmed as an EEN child must contain the following documentation.

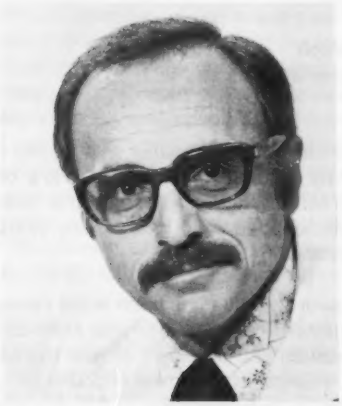
1. Referral.
   a. Copy of referral form.
   b. Documentation of parent notification prior to referral.
      1) Who notified.
      2) Name of parent contacted.
      3) What mode of communication used - if referral was made by certified professional staff member, documentation that a referral notice was being made and was sent to the parents.
      4) When - date.
      5) Who was designated as the local educational agency (LEA) contact person.
   c. Documentation that the parents were given and had explained to them a written explanation of the "Procedural Safeguards," under Public Law (PL) 94-142, Section (Sec.) 615, which protect parent and child throughout the EEN process.
2. Form requesting parent permission to evaluate with explanation of parent rights and assurance that parents understood rights.
3. Form requesting parent permission to obtain and release information with explanation of school district policy and guidelines for confidentiality of records.
4. Parent notification of multidisciplinary team (M-team) staffing meeting and attempts made to involve parents.
5. Copies of M-team report including:
   a. All information used or discussed at the M-team meetings.
   b. Copies of individual reports.
   c. Copy of M-team recommendation.
   d. Parent involvement indicated in report.
6. Documentation that parents:
   a. Were involved or invited to be involved in a conference or the M-team meeting *prior to* M-team making a recommendation. Specify attempts made to involve parents.
   b. Were sent a copy of the M-team recommendations.

7. Copy of the placement decision with documentation that parents were informed of their rights:
   a. To appeal/hearing process described.
   b. To have copies made.
   c. To have independent evaluation, etc. - and parent approval or disapproval indicated.
8. Copy of individualized educational program (IEP) with indication that the appropriate personnel were involved in the meeting.
   a. Document attempts to involve parents.

CONFIDENTIALITY—It is not only necessary to keep, develop, and maintain records but it is also required that these records will be kept in such a manner as to insure confidentiality. The steps to be followed for confidential maintenance of records are:

1. The local school district shall have a written policy or guidelines which indicates the confidentiality procedures relative to the collection, storage, retrieval, use of information, and destruction of records pursuant to federal and state statutes and rules.
2. The local school district shall have a written list of designated individuals who handle personally identifiable data according to:
   a. Those authorized to transmit data.
   b. Those authorized to work with records in a professional way.
   c. Those authorized to process records.
3. This list of authorized personnel must be posted in an appropriate place, i.e. on bulletin boards, on file cabinets, etc.
4. The school district shall make available to parents a list of designated individuals assigned responsibility for confidentiality procedures as described in number 1 above.
5. Persons who are authorized to have access to records but are only occasional or infrequent users and are not on the posted list must sign when they use a record.
6. It is strongly recommended that in the case of an EEN record, that a sign up sheet be kept in the individual folder for use by persons described in number 5 above. In addition to their name and date of use, the purpose for which they used the record should be given.

PROFILE



Victor Contrucci

Vic has always had a variety of hobbies and interests. At the present, most of his leisure time is involved with our quarterhorse farm, something in which our whole family participates. We've done a lot of camping over the years, visiting most all of the western states and national parks and parts of Canada. A favorite trip for Vic was to backpack and canoe portage on fishing trips in the boundary waters of Canada. He also enjoys hunting for pheasant and grouse with his dog, Duchess. Other interests have included bowling, golfing, and producing art work of all kinds. Vic has never been one to waste any leisure time.

Nola Contrucci

Vic has come a long way from the time on the last day of school in his first year of teaching at McKinley Junior High School in Kenosha when he came to school in shorts and was sent home by his principal. Having been a friend and colleague of Vic's for over 20 years, there are many things I have learned to admire about him as a professional.

Foremost, I think that Vic has never been reluctant to take a stand regardless of how controversial the issue. Vic has the ability to immediately get to the meat of an issue and make a decision. I think above all he has infectious enthusiasm. Although he may sound autocratic when you hear him speak, he really is very sensitive to the needs of children and programs. Prove that what you want to do is good for kids and Vic has a way of cutting through the red tape and seeing to it the job gets done.

Donald F. Tofte
Director of Exceptional Education
Racine Unified School District

Vic Contrucci, assistant state superintendent, Division for Handicapped Children, has rightfully earned this trust and honor. His dedication to the children, parents, and professionals in the field and the Department of Public Instruction

is culminated in his understanding of state and federal laws as they relate to the exceptional educational need process of and for Wisconsin children. Vic never forgets the reason for which the Department of Public Instruction, Division for Handicapped Children exists. That is, to benefit those children and parents needing the service and so providing it in the framework of current law.

Vic is candid. He has great stories to illustrate his humor, understanding, and depth of appreciation for his peers and associates. He demonstrates a man of action procedure in facilitating the level of position he holds.

Vic has a tendency to "horse around" at night, especially since he has acquired a farm near Mt. Horeb where he, his wife, and family raise horses. We have surmised that this is the origin of his vast amount of horse sense.

The art of government is learned. Vic Contrucci has learned well the lessons of state education government in the area of special education having been so associated since 1961. He is a teacher, psychologist, director of special education, an administrator, and above all, a professional human being. His energies, efforts, and effective administration will long be remembered in Wisconsin.

Ludwig A. Petersen
Administrator
Cooperative Educational Service Agency 3

My association with Vic Contrucci goes back to 1968 when I did my administrative internship at the Department of Public Instruction. My first impression then was that he is a fair man and truly concerned about the children with exceptional educational needs in this state. This impression has not changed over the years. In fact, these attributes have enabled Vic to gain a considerable amount of respect and support from both regular and special education administrators in the field since he assumed the very difficult task as Administrator of the Division for Handicapped Children last summer. Vic will certainly let you know where he stands on contemporary issues in special education and this leadership is very important at a time when there are so many contemporary issues.

Henry Donatell
Administrator
Manitowoc County
Handicapped Children's Education Board

Having known Vic for the past 10 years and worked under him as a supervisor for the mentally retarded in DHC, writing this is a pleasure and honor for me. Looking back, I remember Vic as a person who was *very* selfdisciplined with excellent control of his emotions. For example, when we were visiting this "old timer" superintendent and the superintendent sez: (as he pounded his fist on his desk) "no whipper snapper from the big city is going to tell me how to run my schools and furthermore" . . . Vic smiled and calmly responded . . .

Vic was one of the states first child advocates. Directly involved in providing exceptional educational need programs, then as section chief indirectly, and then by giving strong support to his supervisors in their work in the field, I have always known that Vic listens to concerns expressed by parents concerning services for their children.

It was reassuring to know he was my immediate supervisor. As I talk with my peers in the field, they, too, feel that reassurance now that Vic is administrator of the Division for Handicapped Children.

Patrick Pflieger
Director of Special Education
Door County Schools Advisory Board - EEN

Vic has to be considered one of Wisconsin's finest home grown "pioneers" in special education. My early contacts with him involved work on curriculum committees for Milwaukee Public Schools. Later, I followed him at Wilbur Wright Junior High School as a teacher and at West Bend as a coordinator of special education. In each situation, the fact that Vic had been there left an imprint and format for successful programming for special education students.

His enthusiasm, planning, and basic understanding of the field provided a model which required little change and made my task considerably easier. Although Vic spent only a short period of time in West Bend, many of his colleagues inquire about him and his ever increasing responsibility and success in the field of special education and continue to wish him well.

Robert C. Malsch
Director of Special Services
West Bend

It is difficult for me, not being neither an educator nor part of any educational system, to "evaluate" Vic's official performance and skills. What then has been his "value" to me and to my handicapped child in the many years we have known one another?

His most noteworthy value has been in his strong support and encouragement of all of us whose chief concern has been the education and training - or lack thereof - of our handicapped youngsters. He has encouraged us in our struggle to become knowledgeable and aware and has supported our need and right to be listened to by the policy and decisionmakers within the educational systems. Needless to say he has not always been right; but then, neither have we. But we value the open dialogue and communication which has characterized Vic's relationship to parents.

As parents and citizens, we look forward to many fruitful years of "partnership" with Vic - he as the public true servant and our handicapped youngsters as those whom he serves.

Lila L. Kelly

Who's Really Watching the Hen House?

John H. Stadtmueller
Administrator, PL 94-142
Federal Program Section Chief

In the past several years, considerable emphasis has been placed on technical compliance—on existing laws as it pertains to Chapter 115, and as it pertains to the federal scene under Public Law (PL) 94-142. In turn, the various levels of government responsible to carry out the mandates of congress with respect to compliance questions have had very decided and marked responsibilities for establishing, reviewing, and monitoring the full matter of compliance as it pertains to programs and services to handicapped children. These compliance areas basically are around all the factors that lead to the element of instructional programming but do not necessarily dip into the matter of programming itself.

The above suggests that there are a host of persons at different levels and responsibilities who are all "guarding the hen house" with respect to all the outside forces that generate in or about the hen house in providing assurances that the hen house is, in fact, appropriately operated. However, the great emphasis on safeguards for the operation of the hen house has had little or no effect on what is going on inside the hen house. In short, we are not at that point in time when the guards of the hen house begin to look at the hen house product.

Many signs from the national, state, and local levels would strongly point to the need for going beyond the outside walls of the hen house and taking a critical look at the product. This product can best be defined as the quality of the program of instruction for handicapped children. Criticism is not directed toward the guards of the hen house as their role is very vital. However, it is felt that activities outside of the hen house will soon be in place; and it will then be necessary for an equal amount of "guardsmanship" to be generated to work with matters related to the inside of the hen house.

Under PL 94-142, the requirement of a statewide preservice and inservice training program appears to be the one major force that will soon call attention to "inhouse hen house matters"; and it is believed that the great amount of emphasis placed on special education will begin to switch from outside the hen house to inside the hen house. The comprehensive training program under PL 94-142, along with the requirements of the 13 Standards for an inservice committee and the concerns for an administrative code change with respect to requiring all regular teachers to receive inservice training for working with handicapped children will eventually join in one massive effort geared toward quality. The matter of quality has many supporters from all facets of the educational scene as well as the educational community. The effort required to bring about a better product inside the hen house will become a driving force which will eventually change our program operation and hopefully result in better educational goals and objectives for our handicapped children.

The movement toward quality is now beginning and, in turn, the educational community must "gear up" toward this gigantic task. Wisconsin is now at the early stages of development in a statewide comprehensive preservice and inservice training program which will virtually have an effect on anyone who touches base with the life of a handicapped child. All of us in the educational scene now have a responsibility to switch gears to join in the movement of "inhouse hen house" activities leading to quality programming for all our handicapped children.

Certification and Training of Teachers of Young Handicapped Children—The Wisconsin Experience

John W. Melcher
Supervisor for the Early Childhood Education-Handicapped
Department of Public Instruction

David J. Franks, Ph. D.
Associate Professor and Coordinator
of the Early Childhood: Exceptional
Education Needs Teacher Training Program
University of Wisconsin-Whitewater

In Wisconsin, public and nonpublic school teachers, local educational agency (LEA) administrators, special services, teacher training, and state educational agency (SEA) personnel have actively participated in the development of the state Early Childhood: Exceptional Educational Needs (EC:EEN) Teacher Certification Code and training systems. As a result of this landmark effort, Wisconsin has a set of validated early childhood-handicapped teacher competencies; a teacher performance evaluation instrument; an EC:EEN Teacher Certification Code; and a state plan for EC:EEN preservice and continuing education. The purpose of this article is to briefly share with you some of the highlights of our experience. Copies of the EC:EEN competencies, the teacher performance evaluation instrument, and the EC:EEN Teacher Certification Code are available upon request to the Early Childhood Education-Handicapped Supervisor, Department of Public Instruction, 126 Langdon Street, Madison, Wisconsin 53702.

According to Hirshoren and Umansky (1977), the states of Alabama, Illinois, Iowa, Kentucky, Maryland, Massachusetts, Minnesota, Mississippi, Virginia, and Wisconsin have certification standards in early childhood-handicapped (EC-H). Wisconsin was one of the few states to report that its EC-H certification code or planned code was competency based (Beier and Enright 1977). In the recently published article by Hirshoren and Umansky (1977), these observers express the opinion that there may be a discrepancy between training and certification causing a ". . . a lack of communication . . ." (p. 193) between the parties involved in certification and teacher trainers. Contrary to this opinion, we want to make it known that in Wisconsin communication has been the rule and our accomplishments are a product of early and continuous cooperation.

Historical Background

For many years, Wisconsin's educators, like those of other states, have known that early intervention "pays off" (Skeels and Skodak, 1939; Kirk, 1958; and Heber, 1969). In Wisconsin, we have had permissive legislation with full state aids since 1947, for the purpose of providing education for handicapped children between the ages of birth to 20 years. While we have had a first-rate record of serving elementary and secondary level handicapped children in the state, only eleven (n:11) special classes for young handicapped children existed prior to 1975. Thirty years had passed and this fund of knowledge, legislation, and financial support has gone virtually unused. A renaissance of interest and commitment to early educational intervention has occurred since the adoption of mandatory legislation in 1973 and the accompanying litigation requiring full service for young handicapped children between the ages of 3 and 6. As of September 1977, nearly 300 teachers are exclusively serving young handicapped children in the state's public schools.

The nearly 300 class units are of two major types. Some of the EC-H class units are downward extensions of traditional categorical areas such as deaf, blind, and mental retardation. Other class units, more than two out of three (n:210), represent the implementation of what many authorities believe is the long overdue generic provision of services to young children on a noncategorical basis (i.e., EC:EEN). In Wisconsin we have chosen to promote the development of both the categorical and noncategorical approaches to training and certification. We chose to do this for practical as well as political reasons (Melcher, 1976). It soon became apparent that the development of EC-H educational services would be hampered if we prematurely introduced an exemplary, noncategorical early education model with its concomitant implications for training, certification, and service. Among the practical considerations was the recognition that some traditional categorical areas such as deaf education have had long histories of accomplishments in early intervention. Also considered was the fact that the development of a differentiated training area and certification code would meet opposition from teachers unions, administrators, teacher trainers, and professional groups because of the oversupply of trained and certified but unemployed teachers in some categorical areas (e.g., mental retardation) in our state. This concern was magnified by the realization that the adoption of an EC:EEN certification code would also require the addition of trained and/or experienced personnel or the retraining of personnel at the teacher training level. The need for an additional training area was not met enthusiastically in some elements of our university system in light of revenue shortages and the reality of possible staff cutbacks caused by the fact that the demand for special education teachers in some categories of service (e.g., mental retardation and learning disabilities) is far below the number graduating each year from training programs in the state.

This was further complicated by the sincere belief on behalf of some teacher trainers, LEA and SEA administrators, and Department of Public Instruction (DPI) personnel that the downward extension of the curriculum and instructional practices associated with the traditional categorical approaches used at the elementary level are appropriate for young children. At the time, most of the state's special education certification requirements did not even differentiate between the elementary and secondary levels making it possible for a teacher to work with handicapped children on a categorical basis from birth to 21 years of age. Until recently, this undifferentiated approach to training and certification in the state of Wisconsin did not recognize the fact that a 3-year-old, for example, is very different from a 13-year-old and that these differences require unique delivery methods, curriculum, and instructional practices. Therefore, it was the opinion of many practitioners in the state that teachers trained and certified on this chronologically undifferentiated categorical basis lacked the philosophy, attitudes, knowledge, and skills which would make them effective teachers of young handicapped children (Franks, 1976). Hirshoren and Umansky (1977) pointed out that the EC-H teacher does not fit into traditional categories that are used in most states. A new approach to the preparation and licensing of these tachers was needed.

Development Activities

Since 1973, a number of important variables began to fall into place. With the enactment of mandatory legislation for the education of all handicapped individuals ranging in age from 3 to 21 came the approval from the legislature for a full-time state supervisor of programs for young handicapped children. Seventy percent special education state aids were made available to the LEA for noncategorical (i.e., generic) as well as categorical (i.e., empiric) approaches to provide educational services for young children with exceptional educational needs (EEN). At the same time a group of influential, knowledgeable, and interested members of the Wisconsin Federation of the Council for Exceptional Children (CEC) met to organize a statewide effort on behalf of young handicapped children. Contemporaneously, the Bureau of the Education for the Handicapped (BEH) was funding model programs in Milwaukee and Portage. During this period, teacher trainers at the University of Wisconsin-Whitewater had initiated efforts to develop an EC-H teacher training program. These elements interacted to lay the groundwork for the accomplishment training and certification goals which we believed were necessary if we were going to provide quality, comprehensive educational services to Wisconsin's young handicapped children.

An important contribution to the development of early intervention services in the state was made by the ad hoc committee on teacher certification appointed in early 1974 by the executive board of the Wisconsin Federation of the Council for Exceptional Children, Division on Early Childhood (DEC). This committee surveyed a cross section of persons representing institutions, agencies, and groups serving young handicapped children in the state. The committee included membership from Department of Public Instruction (DPI) staff, DEC members, as well as early childhood and special education teacher trainers. The results of several questionnaires were used to determine the need for and requirements for certification. The requirements for certification were based on the first nine of the ten general competency presented later in this article. These competency statements formed the basis for the Wisconsin Federation CEC-DEC Early Childhood-Handicapped Teacher Certification proposal (Franks, 1976) which was submitted to the DPI Office of Teacher Training and Certification during the summer of 1975.

Attendant to the development of the CEC-DEC certification proposal, the DPI in collaboration with the University of Wisconsin-Whitewater's Department of Special Education, the Technical Assistance Development Systems (TADS), and select Bureau of the Education for the Handicapped (BEH) funded "First Chance" projects, sponsored a state conference entitled, "New Directions in the Education of Young Handicapped Children." School board members, LEA administrators, teachers, SEA personnel, and early childhood and special education teacher trainers were successfully brought together for the first time to focus on the importance of and alternative approaches to early education. In addition—and of importance—TADS personnel met for the first time with the state EC-H consultant and other DPI Division for Handicapped Children (DHC) personnel. This meeting laid the groundwork for later technical assistance to the state and the acquisition of United States Office of Education (USOE), BEH State Early Childhood Implementation Grants.

In 1976, the DPI/DHC and the University of Wisconsin-Whitewater cosponsored an invitational institute entitled, "Special Education: Early Childhood-Handicapped Teacher Certification and Training." The purpose of this institute was to seek additional support for the proposed certification code, validate the competencies contained in the code, and develop a plan of action to promote its prompt adoption. The participants developed an EC-H teacher role description, a list of associated responsibilities, and identified and validated a list of competencies. They concluded that over 95% of the role related competencies identified by the participants were contained in the original CEC-DEC proposal and that the DPI should adopt a competency based approach to the certification of teachers of young handicapped children based upon the following statements (Franks, 1977).

The EC-EEN teacher will be able to:

1. Assist in the assessment of children's motor, language, cognitive, social-emotional, and self-help development for the purpose of providing appropriate educational services.
2. Plan, develop, implement, and evaluate individual and group instructional activities designed to achieve motor, language, cognitive, social-emotional, and self-help habilitation or rehabilitation objectives.
3. Plan, develop, implement, and evaluate curricular strategies designed to achieve motor, language, cognitive, social-emotional, and self-help habilitation and rehabilitation objectives through accepted (i.e., language arts, creative arts, physical education, and social and physical science) practices.
4. Select, modify, use, and evaluate instructional software and hardware which is designed to facilitate the attain-

ment of motor, language, cognitive, social-emotional, and self-help habilitation or rehabilitation objectives.
5. Assist in the development, implementation, and evaluation of screening procedures for the purpose of identifying young children with exceptional educational needs.
6. Plan, develop, implement, and evaluate activities for the involvement and training of persons responsible for the primary care of young exceptional educational needs children.
7. Locate and secure the cooperation of other agencies, groups, and individuals in the provision of appropriate educational services for young exceptional children and those persons responsible for their care.
8. Assist in the recruitment, selection, orientation, training, and supervision of paid and unpaid persons serving young exceptional children and their families.
9. Plan, develop, implement, and evaluate the administrative aspects of an early childhood educational program for young exceptional children.
10. Evaluate professional performance of self and to plan and implement an action plan which facilitates the attainment of self improvement objectives.

In the months that followed (June 1976 to September 1977), many persons representing different institutions, agencies, and groups intensively negotiated for the adoption of a code statement. The state superintendent; DPI personnel from the Office of Teacher Training and Certification and the Division for Handicapped Children; the Superintendent's Advisory Committee on Teacher Training and Certification; the Superintendent's Special Advisory Committee on Temporary Certification of Special Education: Early Childhood-Handicapped Teachers; a state assembly committee; representatives of the university's central administration; state professional groups (e.g., Wisconsin Education Association); college deans and teacher trainers; DPI personnel; and LEA teachers and administrators participated in the deliberations and contributed to the resolution of associated problems. In April of 1977, a final opening hearing was held for the purpose of soliciting input on the proposed certification code statement. While some concerns were raised about the contents and wording of the statement, all of the many speakers favored its adoption. After considerable reflection, debate, pushing, and shoving, all parties agreed that a competency based EC:EEN certification code was necessary, ideal, and future oriented. As can be seen, the Wisconsin EC:EEN Teacher Certification Code, even with its shortcomings, was the product of a fully exercised developmental and political process.

The following EC:EEN code statement was approved by committees of both houses of the state legislature during the summer of 1977 and the code (PI 303.4) was subsequently signed by the state superintendent on September 6, 1977:

> Baccalaureate degree holding applicants shall have completed an approved Early Childhood—Exceptional Educational Needs program which includes a minimum of 34 semester credits of course work from the following areas:
> 1. Methods of teaching reading.
> 2. Child growth and development.
> 3. Psychology of learning.
> 4. Methods and curriculum in early childhood education.
> 5. Student teaching with normal young children.
> 6. Psychology of the exceptional child.
> 7. Language development and disorders of the young exceptional child.
> 8. Introduction to the education of the young exceptional child.
> 9. Methods, curriculum, and materials for the young exceptional child.
> 10. Assessment of the young exceptional child.
> 11. Organization and administration of programs for the young exceptional child.
> 12. Parent training and family involvement of the young exceptional child.
> 13. Student teaching with the young exceptional child.

Immediate Future—1978

Prior to the adoption of the code statement, a State Implementation Grant was received from BEH for the purpose of developing and implementing a Wisconsin state plan for the education of young handicapped children. An advisory board consisting of a representative cross section of persons with interests in the education of young handicapped children was established. Several task forces were formed to focus on the many objectives of the grant. One of the task forces is responsible for the development of a plan, procedures, and techniques to identify and meet the retraining needs of the teachers presently serving young handicapped children. This group developed a competency based EC:EEN Teacher Performance Evaluation Instrument which was field tested during the summer of 1977 on approximately 150 special and regular education teachers of young children (Melcher and Franks, 1978). This instrument is being used to identify the training needs of teachers, to improve supervision practices, to facilitate employment interviews, and to develop preservice and continuing education programs.

The primary focus of the state EC:EEN Advisory Committee for the 1977-78 fiscal year will be the development and implementation of training strategies, procedures, and materials to meet the retraining and continuing education needs of Wisconsin's 300 EC:EEN teachers. A task force on preservice and continuing education has been formed to develop and field test multipurpose written training modules for each of the ten general competency statements. Upon completion of the field test, the modules will be distributed to LEA, SEA, allied agencies (e.g., Head Start) and teacher training institutions for preservice and continuing education purposes.

All of these accomplishments have been the product of cooperative efforts of several hundred persons representing public and private, school and nonschool, institutions, agencies, and groups serving young handicapped children. We believe that our experience is uncommon but that it can be replicated in every state in the nation. Of what the future holds for the development of the Wisconsin early childhood: exceptional educational needs children, we are not certain—but on one thing we are certain, the young handicapped children, their families, and the people of the state will be better served in the years ahead as a result of this cooperative effort in the development of EC-H training and certification systems.

Health Service Implications of the Education for All Handicapped Law

By Horace K. Tenney III, M.D.
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As a result of the recently passed legislation Public Law (PL) 94-142, children with all types of severe, complex, multiple, health problems will be admitted to schools. No longer will a school be able to say that it has no program for a specific child.[1] They all must be admitted and an appropriate educational experience planned and executed at public expense. Even completely nonambulatory, profoundly retarded children are entitled to free appropriate public education whether in public day schools or in public/private residential institutions.

How can schools cope? What in the legislation helps them provide services? The major portion of the regulations concerning the legislation covers educational services and defines what services are to be delivered, how much, to whom, and where. Services having to do with health problems are included in the statutes and rules under the general term related services referred to in the introductory statement of purpose:

> "To insure that all handicapped children have available to them a free appropriate public education which includes special education and related services to meet their unique needs."

In Section 121a13, related services are defined as "transportation and such developmental, correctional, and other supportive services as are required to assist a handicapped child to benefit from special education."

The health related activities included under this are defined as follows:

> (3) Early identification means the implementation of a formal plan for identifying *a disability* as early as possible in a child's life.
> (4) Medical services means services provided by a licensed physician to determine a child's medical related handicapping condition which results in the child's need for special education and related services.
> (5) Occupational therapy includes:
> (i) Improving, developing, or restoring functions impaired or lost through illness, injury, or deprivation;
> (ii) Improving ability to perform tasks for independent functioning when functions are impaired or lost; and
> (iii) Preventing, through early intervention, initial or further impairment or loss of function.
> (7) Physical therapy means services provided by a qualified physical therapist.
> (10) School health services means services provided by a qualified school nurse or other qualified person.
> (11) Social work services in schools includes:
> (i) Preparing a social or developmental history on a handicapped child.
> (ii) Group and individual counseling with the child and family.
> (iii) Working with those problems in a child's living situation (home, school, and community) that affect the child's adjustment in school.
> (iv) Mobilizing school and community resources to enable the child to receive maximum benefit from his/her educational program.

These are the primary health type services that have some relation to special education. The latter term, special education is defined as follows:

> (a) (1) As used in this part, the term "special education" means specially designed instruction, at no cost to the parent, to meet the unique needs of a handicapped child, including classroom instruction. instruction in physical education, home instruction, and instruction in hospitals and institutions.

It is to be noted that special education is always defined in terms of instruction in this section.

The legislation itself defines related services and specifically excludes medical treatment

> ". . . except that such medical services shall be for diagnostic and evaluation purpose only . . ."
> and established a close link between special education and related services —
> ". . . as may be required to assist a handicapped child to benefit from special education . . ."

In the comments following section 121a14, the regulations state that the need for only related services does not qualify a student for services under the act:

> (1) The definition of "special education" is a particularly important one under these regulations, since a child is not handicapped unless he/she needs special education. (See the definition of handicapped children in section 121a5). The definition of related services (section 121a13) also de-

[1] This paper was presented at the Maternal and Child Health-Crippled Children Directors Conference on March 29, 1978 in Washington, D.C. as a task force report on PL 94-142.

> pends on this definition, since a related service must be necessary for a child to benefit from special education. Therefore, if a child does not need special education, there can be no related service and the child (because not handicapped) is not covered under the act.

It must be pointed out, however, that this is not a part of the regulations since it is included as a comment and, therefore, does not have the force of law. If this strict definition were to be literally applied, it might deny services to some children. It might be argued that a child with a meningomyelocele who was able to attend regular classes would not be eligible for needed physical therapy since he does not need special education. He would not be considered handicapped and, therefore, would not be eligible for any related services which also includes transportation. Thus the only children who could receive these related services such as physical therapy, occupational therapy, audiology, etc. are those who have another disability which interferes with learning, i.e. mental retardation, sensory loss, emotional disturbance, etc.

States seem to be taking a broader approach to these definitions and accepting for service children who need related services such as physical therapy, occupational therapy, or special transportation but who only need minor adjustment in their instruction program.

Nowhere in the legislation or in the rules and regulations is there a mention of even trying to use the existing health services in a community either for consultation or for the provision of services. Other federal programs often include mandated linkages through agreements or contracts with programs which could influence the type of service being provided, i.e. the Memorandum of Understanding between the state Professional Service Renew Organization and the agency administering Title XIX. Public Law 94-142 contains no such language. Even the membership on the state advisory panel is devoid of health care workers. The panel must include:

1. Handicapped individuals.
2. Teachers of handicapped children.
3. Parents of handicapped children.
4. State and local educational officials.
5. Special education program administrators.

States could appoint health care workers to the panel but the regulations do not even indicate that this would be advisable.

It is unfortunate that some states have put considerable emphasis on physical therapy and occupational therapy as health services in school rather than a more generic health coordination such as a school or public health nurse can provide. It is not that these forms of therapy are not valuable, but there are many other children admitted to schools with multiple system involvement that could benefit greatly from a health worker who has knowledge of these systems and how they interrelate. It would be hoped that the schools could see the value of strengthening the whole school health program to cope with the health problems they now must face.

This legislation requires schools to offer services that are also being provided by others in the community loosely considered as the health care system. Perhaps it is little wonder then that some members of the health field feel that there is a great possibility of school systems engaging in health related activities independent of existing services and they worry about the quality of the services and about a duplication of effort. School people read the mandates of the legislation and say they must do these things or suffer the consequences. For them it is easier to organize their own programs and write the rules accordingly than it is to try and fit an existing program with different operating procedures and standards into their own program.

Hopefully, no new legislation would be needed to accomplish the desired coordination. It is hoped that the agencies involved would be sufficiently motivated toward services to children that this would act as a driving force. The Chicago meeting between state and federal administrators of education for the handicapped and maternal and child health, September 28, 1977 had the following recommendation:

> "In areas of overlap/interface (prevention, early identification, assessment, treatment, etc.) each state must develop a planning mechanism to establish interagency agreements/cooperative arrangements in the planning of medical, educational, and other social services for handicapped children and youth. Such planning should result in appropriate formal and/or informal agreement as necessary."

Conclusion

Specific items to consider in the implementation of PL 94-142:

1. Encourage the development of agreements between schools and health care agencies or providers. The real value of this activity is not in the words that are put down but in the mutual understanding that must occur to develop the agreement.
2. Devise methods of sharing basic information among agencies and providers which would not violate essential confidentiality but would assist in coordination and reduce duplication.
3. Develop reciprocal referrals between educational Child Find activities and health case finding activities, such as EPSDT and crippled childrens services, to increase the efficiency of both.
4. Schools should establish the required educational screening activities but should coordinate with existing community screening on items with both health and educational implications.
5. A health oriented person (usually a nurse) should be on the multidisciplinary team that evaluates a child whose educational problem is combined with a health problem. The duties of this person are:
   a. To gather past health information.
   b. Interpret the findings.
   c. Suggest further health oriented studies if necessary for determination of status.
6. The individualized educational program (IEP) that is developed for a child should include a section on the health of a child, plans for care if appropriate, and who is responsible for monitoring the care.

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